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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

02530027aa

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Application Number

10/632,862

Filed

August 4, 2003

on _____

First Named Inventor

Masanori Fujimoto

Signature _____

Art Unit

3627

Examiner

Fawaad Haider

Typed or printed name _____

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 32,635

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

Michael E. Whitham

Typed or printed name

703-787-9400

Telephone number

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒

*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Masanori Fujimoto

Confirmation No. 4648

Serial No. 10/632,862

Group Art Unit: No. 3627

Filed August 4, 2003

Examiner Fawaad Haider

For FIXED AMOUNT SALES SYSTEM

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

This Pre-Appeal Brief Request for Review is being concurrently filed with a Notice of Appeal. The Commissioner is authorized to charge Attorney's Deposit Account 50-2041 (Whitham, Curtis, Christofferson & Cook) for any fees due for the appeal or to gain entrance and consideration of this pre-appeal brief request for review.

The Invention

The invention is directed to a fixed amount sales system associated with a gasoline stand. As shown in Figure 2 of the application, the user enters a precise amount of money he or she is going to spend; the user then gets a display which shows items (e.g., food, soda, cigarettes, etc.) which he or she might purchase that are less than the specified amount of money; the purchaser may then choose (or not choose) to purchase one or more items; and then the purchaser fills his or her tank with gasoline up to the precise amount specified or up to the precise amount specified less the cost of the items chosen (if any). In short, the purchaser gets gas, and optionally items he or she chooses, and does not get any change.

Claim 1 specifies:

1. A fixed amount sales system associated with a gasoline stand, comprising:
a point of sales (POS) terminal:

a display associated with the POS terminal;
wherein said display displays a plurality of fixed amount selections for fuel,

wherein said POS terminal is used to select one fixed amount selection from said plurality of fixed amount selections for fuel,

wherein said display, after selection of said one fixed amount selection is made with said POS terminal, selectively displays one or more option items to be purchased, each option item being associated with an option item amount, each option item displayed having an option item amount which is less than said one fixed amount selection made with said POS terminal, and upon selection of one or more option items displays as a balance amount

a difference between said one fixed amount selection and any option item amounts for option items to be purchased, and

wherein said POS terminal permits fueling at said gasoline stand in an amount equal to said balance amount. (Emphasis added)

Errors and Omissions

The Examiner has failed to make out a *prima facie* case of obviousness under 35 U.S.C. §103(a) in rejecting claims 1, 5, 6, and 9. In short, the references alone or in combination do not show the ability to get (1) gas and (2) items, with no money back. As described in the application, this is accomplished by providing a variable amount of gas that depends on the items selected.

In short, in the claimed invention, the person fueling his or her car does not need to manage the pump to only fuel a certain amount or calculate the cost of items plus tax. Rather, all he or she needs to do is put in a fixed amount, pick any option items they want, and fuel automatically to the dollar amount after the options are covered. The customer is not provided with “change”, and does not need to have transaction histories tracked using a “transponder”.

In sharp contrast, both references cited by the Examiner show tracking and handling change. They do not display a balance amount after items are selected and permit fueling at said gasoline stand in an amount equal to said balance amount.

In particular, as noted in the amendment filed June 5, 2008 at pages 5-6,

U.S. Patent Publication to Wilson shows the use of a prepaid transponder. Wilson provides a system where a cash customer adds value to a transponder. The customer pumps gas and/or buys optional items. Once his tank is full or he or she stops pumping, the amount of money remaining is credited to the transponder so that it can be used at some point in the future. Wilson describes the use of transponder systems (hand held or vehicle mounted (see paragraph [0127]) which allow the transmission of information from a customer to a controller. This information may be used to control the types of purchases being made, etc. Further, Wilson provides a way to use the transponder in conjunction with cash payments.

Also, as noted in the amendment filed June 5, 2008, at page 6, JP 10-324398 to Kazumi requires the customer to have a memory device. In Kazumi, the customer goes to a filling station and, for example, puts in \$20. If his car needs only \$19 worth of fuel to be full, the pump stops automatically and the extra \$1 is credited onto the memory device (see Abstract—"the saved amount of money of this customer is updated to be the difference between the sold [mount] of money for gasoline actually refuelled and the total of the saved amount of money of this customer and the amount of money specified by this customer"). Presumably, the saved amount can be used at a later time. In short, Kazumi provides a system where the customer can use cash in fixed amounts, and can perform fueling "without causing damage to a gas station" (see abstract).

Finally, as noted in the amendment filed June 4, 2008, at pages 6-7, no combination of Wilson and Kazumi would make the claimed invention obvious, as both Wilson and Kazumi describe systems which require a transponder or memory device. These are wholly different systems than the claimed invention, which does not utilize a transponder. The invention allows anybody to use a fixed amount of cash to pay for gas and other items. There is no requirement for a transponder or memory device (e.g., no registration, no providing of information about a customer, no requirement on the customer to keep track of a device which communicates and/or holds information). The invention allows the selections of optional items available to a customer to vary depending on the fixed amount he or she has provided. In short, the invention provides a simplified system which does not require the customer to carry a device and does not require the customer to precisely track the amount of gas or the amount of purchases he is making (as

this is done automatically).

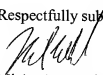
In the office action of September 11, 2008, at page 3, it is stated that it would have been obvious to modify Wilson's invention with Kazumi's disclosure of deducting from a fixed amount in order to deal efficiently without degrading customers service when a purchasing amount of liquid to be sold at a predetermined quantity unit is specified in an amount of money. This reasoning is not supported by the Wilson or Kazumi disclosures AND does not meet the recitations in claim 1.

First, both Wilson and Kazumi require some form of memory product which must be carried by a customer. Neither Wilson nor Kazumi allow any customer (i.e., one without a transponder) to enter a fixed amount to be spent. Second, both Wilson and Kazumi show crediting and debiting the transponder or memory device, and leaving a balance when change is involved. Neither Wilson nor Kazumi permit providing a variable amount of fuel to the customer which is dependent upon the item(s) he or she has purchased (i.e., claim 1 requires displaying a balance amount after items are selected AND permits fueling at said gasoline stand in an amount equal to said balance amount).

Conclusion

In view of the above, it is requested that the position of the Examiner be reviewed, that the rejections be withdrawn, and that the application be passed to issue.

Respectfully submitted,



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